



CF 502
IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

WRIT PETITION NO. 2407 /1996.

1. Smt. Savitri Devi, W/o
Parasnath Tiwari, R/o
Vill. & P.O. Birkona,
Distt. Bilaspur (M.P.).
 2. Shri Parasnath Tiwari,
father of late Constable
Sunil Kumar Tiwari,
R/o Vill. & P.O. Birkona,
Distt. Bilaspur (M.P.).
- ... PETITIONERS

-Versus-

- R 1. Central Reserve Police Force,
Through: Director General,
CRPF Head Quarter, New Delhi.
 - Aek. 2. DIG, CFPF Group & Centre,
Central Reserved Police,
Bhubaneshwar, Orissa.
- ... RESPONDENTS

PETITION UNDER ARTICLE 226 & 227
OF THE CONSTITUTION OF INDIA.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2407 of 1996

(36)

Petitioner : Smt. Savitri Devi & another

Versus

Respondents : Central Reserve Police Force &
others

Post for order on 11th July, 2006

Sd/-
Satish K. Agnihotri
Judge

16.7.2006

31

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2407 of 1996

Petitioner : Smt. Savitri Devi & another

Versus

Respondents : Central Reserve Police Force &
others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Shri P. Diwakar, Senior counsel with Shri P.R. Patankar, counsel
for the Petitioners.

Miss Sharmila Shinghai, counsel for the Respondents.

ORDER

(11th July, 2006)

1. The present petition is filed by the parents of late Shri Sunil Kumar Tiwari, who died in the intervening night of 30th November/1st December, 1982 due to bullet injury sustained by him.
2. The petitioners have claimed the relief of payment of liberalizes at the rate of 75% with interest at the rate of 18%.
3. Learned counsel appearing for the respondents submits that the entire pensionary dues and other admissible dues as per law, have been paid to the petitioner and as such nothing survives in this matter.
4. This Court has dealt with the identical dispute in detail between the parties in another matter i.e. W.P. No. 554/2001. The detailed judgment and order of the same is passed on 11.7.2006.
5. In view of the reasoned order passed in W.P. No. 554/2001, this petition stands disposed of.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 554 of 2001

Petitioner

Shri Parasnath Tiwari

Versus

Respondents

Central Reserve Police Force &
others

Post for order on // ¹⁴ July, 2006.

Sd/-
Satish K. Agnihotri
Judge

190

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 554 of 2001

Petitioner : Shri Parasnath Tiwari

Versus

Respondents : Central Reserve Police Force & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Shri P. Diwakar, Senior counsel with Shri P.R. Patankar, counsel
for the Petitioner.

Miss Sharmila Shinghai, counsel for the Respondents.

ORDER

(11th July, 2006)

1. The present petition is filed by the father of the deceased son Shri Sunil Kumar Tiwari who died while performing service as constable with the Central Reserve Police Force at Mizoram.
2. The facts of the case, in nutshell, are that the son of the petitioner, Shri Sunil Kumar Tiwari was employed as a constable in 66 Battalion of Central Reserve Police Force (in short "CRPF") at Bhubneshwar. The petitioner is a resident of village Birkona, District Bilaspur. He is an old man and he has no financial support due to untimely death of his son Shri Sunil Kumar Tiwari (hereinafter referred to as "the deceased son").
3. According to the petitioner, the petitioner received the information from the office of the respondent No. 2 that his son died on 1.2.1982 and his last rites were performed without intimation or information to the parents, at the place where the deceased son was working.

4. According to the respondents, the fellow constable Shri Desh Raj while being on sentry duty in the residence of the Development Commissioner, Mizoram at Aizwal saw a man climbing a guava tree in the moonlight, shot four rounds of bullets within a distance of 15 yards, whereby the deceased son of the petitioner died on the spot.
5. The parents of the deceased son made several representations to respondent No. 2 for sending last photograph of their deceased son. The petitioner received a letter dated 18.12.1982 from a friend of his deceased son namely Ravindra Kumar Sharma wherein it was that the death of the deceased son was not an accident, but, it was a brutal murder committed by his fellow constables.
6. The petitioner has filed this petition under Article 226 of the Constitution of India seeking the following reliefs:-

"7. Relief (s) sought :

It is respectfully prayed by the petitioner to direct the respondents to enquire into :-

- a) To direct the respondents to inquire into or investigate the matter and report to the court and the petitioner hereof.
- b) To direct the respondents to take action to book the culprit.
- c) That an independent inquiry be ordered by the CBI or some other responsible authority to look into the case of the death of the petitioner's son.
- d) If this Hon'ble Court comes to the conclusion that the death of the petitioner's son was not by an accident, then, the petitioner be suitably compensated by the respondents. The respondents be directed to pay Rs. 5.00 lacs as compensation to the petitioner.
- e) Any other relief may also be granted to the petitioner which this Hon'ble Court feels fit in the facts & circumstances of the case."

1982

7. The respondents filed their reply stating that the death of the deceased son was an accident on the intervening night of 30th November/ 1st December 1982. The constable Desh Raj, who fired on the deceased son, was arrested by the Civil Police, Aizwal (Mizoram) and a criminal case was registered against him. The photograph annexed with the return, according to the petitioner, was not that of the deceased son of the petitioner. The respondents were directed to verify the position. By way of the additional return, the respondents filed the report of the Central Forensic Science Laboratory, Central Bureau of Investigation, Block No. 4, CGO Complex, Lodhi Road, New Delhi, wherein it was stated as under :-

“5. LABORATORY PROCEDURE, EXPERIMENT & ANALYSIS

The laboratory examination was undertaken for the purpose of photographic comparison amongst one another. The various photographs features were taken for comparison. The peculiar feature, namely point to point physical match transparencies, facial feature and individual characteristics in the photograph have been examined for the purpose of inter-comparison. The photographic features reveal some similarities but on the whole gross dis-similarity appear in both the photographs.

6. RESULT OF EXAMINATION AND CONCLUSION

On the basis of the laboratory examination and scientific analysis no definite conclusion could be drawn in respect of photograph marked Q-1 when compared with S-1”

8. In the course of the arguments, the respondents raised several objections namely the Police Department, Government of Mizoram be made as a party and this Court has no jurisdiction under Article 226

199

of the Constitution of India as the cause of action arose in Aizwal within the territorial jurisdiction of Mizoram. It was further stated that post-mortem was conducted at Civil Hospital, Aizwal and the case was registered at FIR No. 1/12/82 under Section 304 of the Indian Penal Code at Police Station, Aizwal on 1.12.1982. The constable Desh Raj and In-charge of the post LNK Ramjeet Singh Yadav were arrested on 2.12.1982 and they were released on bail on 6.12.1982. It was further informed that the Superintendent of Police of District Aizwal by his letter dated 8.12.1983 informed the Commandant 66 Battalion, Central Reserve Police Force, as follows :-

"With reference to your letter No. P.VIII-2/83-EC-II dated 29/11/83, I am to inform you that Aizwal Police Station Case No. 1/12/82 U/S 304 IPC has been ended in final report vide No. 89 dated 3/8/83 as case true but insufficient evidence against the accused person. Submitted for favour of information."

9. The respondents further submitted in his reply that the respondents have approached the Court of ADM (I) Aizwal by filing an application dated 17/10/02 and the Court of ADM (I) Aizwal passed the following orders :-

"Seen petition submitted by Pu.V.S. Khatana A/C 71 Bn CRPF Zenbawk Aizwal praying for issue of FR copy in connection with Aizwal PS C/No. I(12) /82 dated 1/12/82 U/S 302 IPC Heard the prosecution that the above case have already been returned in FR No. 83/84 dated 3/08/83 but copy of the FR cannot be furnished the petitioner as the case record have been burnt into ashes in the year 1994 when Aizwal court was gutted by fire. As is the fact let the petitioner be informed accordingly."

194

10. The departmental inquiry was conducted against the constable Desh Raj, who was responsible for the death of the deceased son and LNK Ranjit Singh Yadav, who was the Guard Commander. Pursuant to the departmental inquiry, constable Desh Raj was dismissed from service w.e.f. 6.7.1983 and Guard Commander LNK Ranjit Singh Yadav was punished by reduction of rank to constable for sixteen months. The civil suit filed by the constable Desh Raj against the order of dismissal is pending consideration in RCA No. 235/2005 in the Court of Shri Rakesh Kumar Sharma, AD & SJ, Tees Hazari Delhi.
11. With regard to pensionary benefits, the learned counsel for the respondents submitted that all the dues as per the rules and instructions have been paid to the parents of the deceased son Late Shri Sunil Kumar Tiwari. The respondents have not made any submission with regard to payment of compensation to the deceased son.
12. I have heard learned counsel for the parties and perused the records appended to the petition as well as the return.
13. Objections of the respondents with regard to the maintainability of this petition under Article 226 of the Constitution of India on the ground that no cause of action has arisen within the territorial jurisdiction of this Court are legally untenable. Article 226 (2) clearly provides that the cause of action wholly or in part if arises in the territorial jurisdiction of a High Court. The said High Court has full jurisdiction to entertain the petition irrespective of the fact where the respondents are residing. In the present case, the deceased son made an application for appointment from Bilaspur. The information of the death was communicated to the parents who reside in Bilaspur and the ultimate loser or sufferer of the death of the deceased son of the

parents or relatives, who reside within the territorial jurisdiction of this High Court. Taking into consideration all the facts, it is held that a part of cause of action arose here within the territorial jurisdiction of this Court and this petition is accordingly maintainable in this Court.

14. It is evident that the son of the petitioner late Shri Sunil Kumar Tiwari died in the intervening night of 30th November/ 1st December, 1982 at 01.10 hours due to gun shot of constable Desh Raj.
15. The Court of Enquiry Committee of three members comprising of Shri Jagjit Singh, Assistant Commandant 54 Battalion, Shri A.R. Gaday, Deputy S.P., 66th Battalion CRPF and Shri M.B. Negi, Deputy S.P. 34th Battalion, CRPF, submitted their opinion as under :-

"OPINION

After taking into consideration the facts revealed during the course of the enquiry the court has found that No. 800650815 Ct. Sunil Kumar Tiwari of C/66 Bn CRPF was killed by firing while on sentry duty at the resident of Development Commissioner, Mizoram at about 0110 hours on 1-12-82 due to the following reasons :-

- a) Lack of confidence and loss of wills, caused by the excessive fear due to the suspected presence of hostiles which prompted No. 800664113 Ct. Desh Raj to act in a hasty manner.
- b) Lack of qualities or leadership displayed by No. 680385051 L/NK. Ramjit Yadav in which he failed to tackle the situation with cool mind and created panic which resulted in a hasty and rash action by No. 800664113 Ct. Desh Raj."

16. The report of the Central Forensic Science Laboratory with regard to the photograph sent to the petitioner is not clear as to whether the photograph sent to the petitioner was the same or different. However, it is found that there is some similarities, but on the whole gross dis-similarity. It is further noticed that the respondents/department has not taken any steps in the criminal case after the file was closed on the ground of lack of sufficient evidence. It is further established that constable Desh Raj, who has been found guilty in the inquiry report, was proceeded under departmental inquiry and he was dismissed from service and Guard Commander LNK Ramjit Singh Yadav was also punished with reversion to the post of constable for 16 months, as stated above.
17. It appears that the respondents have taken death of the deceased son of the petitioner as an accident, not the murder. Accordingly, the FIR was lodged under the provisions of Section 304 of the Indian Penal Code, not under Section 302 of the Indian Penal Code.
18. At this stage, directing a fresh criminal trial, when all the records have been destroyed, may not be fruitful. However, in the facts and circumstances of the case, the petitioner can be compensated for loss of his son and mental agony suffered by the parents and relatives due to casual conduct of the respondents by not sending the death report or not informing the death to the father of the deceased son and sending the photographs of another person, not of the deceased son, by payment of some amount to the aggrieved parents.
19. The Supreme Court in the case of **Rudal Sah Vs. State of Bihar and another** { (1983) Supreme Court Cases 141}, where Rural Sah was kept inside the jail for more than over 14 years after acquittal without

134

taking care of his mental imbalance, the Supreme Court observed in para 10, as under:-

"10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore,

the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."

20. The Supreme Court in the case of **Bhim Singh, MLA Vs. State of J & K and others** { (1985) 4 Supreme Court Cases 677}, wherein the petitioner was denied personal liberty by placing the petitioner under custody, the Supreme Court observed in para 2, as under :-

"2. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in *Rudal Sah v. State of Bihar* and *Sebastian M. Hongray V. Union of India*. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs. 50,000 within two months from today. The amount will be deposited with the Registrar of this Court and paid to Shri Bhim Singh."

21. The Supreme Court in the case of **M.C. Mehta and another Vs. Union of India and others** { (1987) 1 Supreme Court Cases 395 in para 31 observed, as under:-

"31. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry

199

which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.....”

22. The Supreme Court in the case of **Charanjit Kaur (Smt.) Vs. Union of India and others** { (1994) 2 Supreme Court Cases 1} observed in para 14, as under :-

“14. In the aforesaid facts, the conclusion is, therefore, inescapable that the officer died while in service in mysterious circumstances and his death is attributable to and aggravated by the military service. The responsibility of his death is prima facie traceable to the act of criminal omissions and commissions on the part of the authorities concerned. The petitioner is, therefore, entitled to suitable compensation as well as to the Special Family Pension and the Children Allowance according to the relevant rules w.e.f. June 23, 1978, i.e., the date of the death of her husband. We award her compensation in the amount of Rs 6,00,000 (Rupees six lakhs) and direct that the said amount be paid to her within six weeks from today. We further direct that the arrears of the Special Family Pension and the Children Allowance be paid to her within eight weeks from today with interest at 12% per annum. Rule issued is made absolute

445
220

accordingly. The first respondent will pay the costs of the writ petition which are fixed at Rs 6000."

23. The Supreme Court in the case of **Chairman, Railway Board and others Vs. Chandrima Das (Mrs) and others** { (2000) 2 Supreme Court Cases 465} observed in para 37, as under :-

"Now, Smt Hanuffa Khatoon, who was not the citizen of this country but came here as a citizen of Bangladesh was, nevertheless, entitled to all the constitutional rights available to a citizen so far as "right to life" was concerned. She was entitled to be treated with dignity and was also entitled to the protection of her person as guaranteed under Article 21 of the Constitution. As a national of another country, she could not be subjected to a treatment which was below dignity nor could she be subjected to physical violence at the hands of government employees who outraged her modesty. The right available to her Article 21 was thus violated. Consequently, the State was under a constitutional liability to pay compensation to her. The judgment passed by the Calcutta High Court, therefore, allowing compensation to her for having been gang-raped, cannot be said to suffer from any infirmity."

24. In the instant case, the petitioner has suffered mental agony for more than 20 years particularly, when the fact of cause of death was not informed to the petitioner, his wife and relatives and further by receiving a photograph of some other persons, not of his deceased son. The petitioner, his wife and other family members have been denied the proper information, was not shown the last photograph till date, was not intimated about the cremation in time. Accordingly, they have suffered mental agony and financial difficulties for a long period. Their loss and mental agony cannot be compensated by any

other means, except by payment of some amount to the parents by respondents. This may give some satisfaction to the aggrieved petitioner and other family members.

25. Accordingly, it is directed that the petitioner is entitled to a sum of Rs. 1,00,000/- (Rs. One lac only) payable by the respondents to the petitioner and his wife for the mental agony and loss suffered by them.
26. Despite Court's order, learned counsel appearing for the parties have not filed written submissions till date.
27. The writ petition is accordingly allowed to the above extent with cost quantified to be Rs. 5000/-. The respondents are directed to pay the compensation amount and the cost within a period of eight weeks from today.

Sd/-
Satish K. Agnihotri
Judge